

STATE OF MICHIGAN
IN THE SUPREME COURT

COMPLAINT AGAINST:

HON. HARRELL D. MILHOUSE
Magistrate, 68th District Court
Flint, Michigan

FORMAL COMPLAINT NO. 63

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DECISION AND RECOMMENDATION
FOR ORDER OF DISCIPLINE

At a session of the Michigan Judicial
Tenure Commission held on the 8th
day of November, 1999, at which
the following Commissioners were

PRESENT: Hon. Marianne O. Battani
Hon. William B. Murphy
F. Philip Colista, Esq.
Hon. Theresa Doss
Hon. Barry M. Grant
Hon. M. Richard Knoblock
Joanne McPherson
James Mick Middaugh

Pursuant to MCR 9.221(C), with Respondent's consent, which appears below, the Judicial Tenure Commission of the State of Michigan ("Commission"), files this Decision and Recommendation for Order of Discipline.

The Commission makes the following findings of fact and conclusions of law:

1) Respondent is now, and was at all times mentioned, a Magistrate of the 68th District Court in the City of Flint, County of Genesee, State of Michigan.

2) Roger Dale Collins was charged in said court with three traffic misdemeanors: 96Z00814A, no operator's license in possession; 96Z00814B, driving while license suspended; and 96Z00814C, improper plates.

3) Mr. Collins was subsequently sentenced to incarceration after he pled guilty to a felony driving offense.

4) While Mr. Collins was incarcerated, Respondent sent him a Plea By Mail form pertaining to each of the misdemeanor offenses charged. These standardized forms advised Mr. Collins, among other things, about his right to plead guilty or not guilty, to have a trial by judge or jury, and to have the assistance of an attorney. These forms also allowed Mr. Collins to indicate by a check mark whether he plead guilty or not guilty. As to all three offenses, Mr. Collins indicated he was pleading not guilty and returned the forms to the court.

5) In response, on April 17, 1997, Respondent sent Mr. Collins a letter in which Respondent acknowledged receipt of the Plea By Mail forms as to all three matters in which he had indicated he was pleading not guilty. Respondent's letter advised Mr. Collins that the quickest way to receive credit for time served in jail was to plead guilty and provide a jail release date to the court.

6) On May 9, 1997, Mr. Collins sent a letter to Respondent in reply to Respondent's April 17, 1997 correspondence. In his letter, Mr. Collins rejected the idea of a guilty plea.

7) Respondent received Mr. Collins' May 9, 1997 letter and in response sent another letter to Mr. Collins on May 19, 1997 concerning the three misdemeanor matters. In that letter, Respondent again asserted that the quickest way to receive credit for time served in jail was to plead guilty and give the court a jail release date. Respondent's letter also stated he was enclosing new Plea By Mail forms for Mr. Collins' convenience and advised Mr. Collins that he could hire or request an attorney if he did not wish to plead guilty.

8) In reply to Respondent's letter of May 19, 1997, Mr. Collins reiterated in another letter to Respondent that he was not pleading guilty. Mr. Collins also requested that either an alleged plea agreement to dismiss the three traffic misdemeanors be honored or that arrangements be made for his presence at a hearing on the charges.

9) Notwithstanding Mr. Collins' repeated statements that he was pleading not guilty, Respondent, on July 22, 1997, knowingly executed and caused to be filed in the records of the 68th District Court, a Judgment of Sentence as to each of the three misdemeanor matters, which falsely stated that Mr. Collins had been advised of right to counsel and appointed counsel and had knowingly, intelligently and voluntarily waived that right, and pled guilty to the charged offense. In each matter a fine and costs were suspended; Mr. Collins received credit for time served; and a \$25.00 clearance fee was imposed. With respect to 96Z00814A and 96Z00814B, the convictions were reported to the Michigan Secretary of State for inclusion in Mr. Collins' driving record. As a result of these actions, Mr. Collins was denied the opportunity for a hearing and basic due process.

10) Even though the defective Judgment of Sentence in each matter was brought to Respondent's attention, he took no corrective or remedial action.

11) Respondent's conduct, as described in paragraphs 1) through 10) above, constitutes:

- (a) Misconduct in office, as defined by the Michigan Constitution of 1963, Art. VI, § 30, as amended, and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Art. VI, § 30, as amended, and MCR 9.205;
- (c) Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- (d) Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
- (e) Refusal to be faithful to the law, contrary to the Code of Judicial Conduct, Canon 3A(1);
- (f) Creation of a false judicial record; and
- (g) Conduct violative of MCR 9.104(1), (2) and (3), in that such conduct:

is prejudicial to the proper administration of justice;

exposes the legal profession or the courts to obloquy, contempt, censure or reproach; and

is contrary to justice, ethics, honesty or good morals.

12) On March 24, 1998, as part of the Commission's preliminary investigation, Respondent was asked to comment on Grievance No. 97-11135, filed by Roger Dale Collins. On April 28, 1998, Respondent submitted a written reply to the grievance. In that reply, Respondent did not make a full and fair disclosure and knowingly made false and misleading statements that he had mistakenly entered the judgments and closed the files and that it was not his intent to falsify documents or deprive Mr. Collins of his right to due process.

13) On June 24, 1998, the Commission sent Respondent a 28-day letter, pursuant to MCR 9.207(C), and invited his further reply. In Respondent's reply of August 4, 1998, he did not make a full and fair disclosure and knowingly made false and misleading statements that he had mistakenly closed the files and he had not intended to knowingly and purposely deprive Mr. Collins of his due process rights. Respondent described the processing of Mr. Collins' files as a mistake.

14) Respondent's conduct, as described in paragraphs 12) and 13) constitutes:

- (a) Misconduct in office, as defined by the Michigan Constitution of 1963, Art. VI, § 30, as amended, and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Art. VI, § 30, as amended, and MCR 9.205;
- (c) Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;

- (d) Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
- (e) Failure to cooperate with the Commission during a preliminary investigation, contrary to MCR 9.213(B); and
- (f) Conduct violative of relevant portions of MCR 9.104(1), (2) and (3), in that such conduct:
 - is prejudicial to the proper administration of justice;
 - exposes the legal profession or the courts to obloquy, contempt, censure or reproach; and
 - is contrary to justice, ethics, honesty or good morals.

MITIGATING CONSIDERATIONS

15) Prior to the filing of Formal Complaint No. 63, Respondent had not been charged with misconduct in office or conduct clearly prejudicial to the administration of justice.

16) After these formal complaint proceedings commenced, Respondent was suspended without pay from the performance of his judicial duties by the 68th District Court for a period of 10 days.

WHEREFORE, IT IS RECOMMENDED that the Supreme Court of the State of Michigan file an opinion and judgment publicly censuring Respondent and directing that Respondent be suspended without pay from the performance of

his judicial duties for a period of 10 days, with credit given for 10 days, in recognition of the suspension ordered by the 68th District Court.

STATE OF MICHIGAN
JUDICIAL TENURE COMMISSION

HON. MARIANNE O. BATTANI
CHAIRPERSON

HENRY BASKIN, ESQ.

F. PHILIP COLISTA, ESQ.

HON. THERESA DOSS

HON. BARRY M. GRANT

HON. M. RICHARD KNOBLOCK

JOANNE MCPHERSON

JAMES MIDDAUGH

HON. WILLIAM B. MURPHY

WAIVER AND CONSENT

Pursuant to MCR 9.221(C), by my signature below, witnessed by counsel, I, Hon. Harrell D. Milhouse, hereby knowingly, intentionally, and voluntarily waive my right to a hearing on the issues raised by the pleadings in this judicial disciplinary proceeding, to a Master's Report setting forth findings of fact and conclusions of law with respect to the issues raised by the pleadings, and *de novo* review of a factual record by the Commission prior to the issuance of its Decision and Recommendation for Order of Discipline; and consent to the Judicial Tenure Commission's Decision and Recommendation for Order of Discipline set forth above, and specifically to the Commission's findings of fact, conclusions of law and recommendation that the Supreme Court enter an order publicly censuring me and directing my suspension without pay from the performance of my judicial duties for a period of ten (10) days, with credit given for ten (10) days, in recognition of the suspension I have served at the direction of the 68th District Court. This waiver and consent is conditioned upon the Michigan Supreme Court adopting the Judicial Tenure Commission's Decision and Recommendation for Order of Discipline.

HON. HARRELL D. MILHOUSE

A. GLENN EPPS, ESQ.
Counsel for Respondent

Dated: _____